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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/552,986

08/25/2006

Tor Brekke

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2477

26111

7590

08/18/2008

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EXAMINER

MCLEARN, STEPHANIE D

ART UNIT

PAPER NUMBER

4157

MAIL DATE

DELIVERY MODE

08/18/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/552,986	<b>Applicant(s)</b> BREKKE, TOR	
	<b>Examiner</b> STEPHANIE MCLAREN	<b>Art Unit</b> 4157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 11 is/are rejected.
- 7) ☒ Claim(s) 3-10 and 12-17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/25/06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

Claims 2,13 & 16 objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must be in the alternative only. See MPEP § 608.01(n). Accordingly, the claims 2 & 13 have not been further treated on the merits.

Claims 4-7,9,10 & 14-15 objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependant claim. See MPEP § 608.01(n). Accordingly, the claims 4-7,9,10, & 14-15 have not been further treated on the merits.

Claim 8 objected to under 37 CFR 1.75(c) as being in improper form because it depends from an improper multiple dependant claim. See MPEP § 608.01(n). Accordingly, the claim 8 has not been further treated on the merits.

Claim 12 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 17 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2 & 11 rejected under 35 U.S.C. 103(a) as being unpatentable over Newton in view of Crabb Jr..

With regards to claim 1, Newton teaches a method for cooling product units in a tank, using a coolant made of ice and water, using a mixture of water and ice particles, and circulating the mixture among the units.

Newton fails to teach the products being packaged before cooling. Crabb Jr. teaches a method of cooling packaged produce using a mixture of ice and water (see abstract).

Given that the methods of cooling are the same, and that for some methods of packaging pumping the packages full of ice slurry as revealed in Crabb Jr. might be impractical, the idea of using an immersion bath on these product units would have been obvious to one of ordinary skill in the art as a method of cooling product units.

With regards to claim 2, Newton discloses the claimed invention except for an optimum ice percentage of 25%. It would have been obvious to one having ordinary skill in the art at the time the invention was made to define a value at or near 25%, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

With regards to claim 11, Newton teaches a method for cooling units of products using a mixture of ice and water, having one or more treatment tanks and a means of circulating the liquid around and between the product units submerged in the treatment tank.

Newton fails to teach the products being packaged before cooling. Crabb Jr. teaches a method of cooling packaged produce using a mixture of ice and water (see abstract).

Given that the methods of cooling are the same, and that for some methods of packaging pumping the packages full of ice slurry as revealed in Crabb Jr. might be impractical, the idea of using an immersion bath on these product units would have been obvious to one of ordinary skill in the art as a method of cooling product units.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHANIE MCLAREN whose telephone number is (571)270-7127. The examiner can normally be reached on Monday - Friday 7:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marvin Lateef can be reached on (571) 272-5026. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SDM/

8/4/08

/Marvin M. Lateef/

Supervisory Patent Examiner, Art Unit 4157